



**OFFICE
OF
THE ADMINISTRATIVE LAW JUDGE**

2021 REPORT

**MASSACHUSETTS DEPARTMENT OF
TRANSPORTATION OFFICE OF THE ADMINISTRATIVE
LAW JUDGE**

2021 Report

Overview of the Office

The Office of the Administrative Law Judge is established pursuant to G.L. c. 6C, §40, as amended by St. 2009, c. 25, §8. Its essential function is to make fair and impartial decisions on disputes involving the Department, including:

- construction contract disputes appealed from decisions of the Chief Engineer
- appeals from the denial of outdoor advertising permits by the Department's Division of Outdoor Advertising
- contractor appeals from decertification of disadvantaged minority business enterprises
- appeals from decisions of the Department's Right of Way Bureau pursuant to the requirements of 49 CFR Part 24 §24.10
- other matters as assigned by the Secretary of Transportation

Executive Summary

This report provides the status and disposition of appeals and other matters brought to the Office of the Administrative Law Judge in 2021.

In summary, the following matters were handled in calendar year 2021:

- Two (2) construction contract appeals were dismissed for lack of jurisdiction. Three (3) other appeals were received and will be heard in calendar year 2022.
- Fourteen (14) direct payment demands were ruled on in accordance with G.L. c.30, §39F.
- Six (6) contractor appeals from DBE decertification proceedings initiated by the MassUCP were received by or were pending before the MassUCP Adjudicatory Board. One (1) appeal was withdrawn when the MassUCP determined that it would not go forward with decertification proceedings. A hearing was commenced on another appeal, which will conclude in 2022 with a decision by the Board. The remaining appeals will be scheduled for hearing and decided in calendar year 2022 in accordance with 49 CFR §26.87 and M.G.L. c. 30A.

The Office was also negatively impacted in calendar year 2021 by the ongoing COVID-19 pandemic, which caused significant disruption to matters that were scheduled to be heard in

2021. Often proceedings had to be postponed or rescheduled due to the unavailability of parties, witnesses, appellants, counsel, or MassUCP Adjudicatory Board members. This situation affected the timeliness of hearings and decisions and has created a backlog of matters to be scheduled and heard in 2022.

To address these impacts, the Office continues to make improvements in its use of technology, particularly electronic signatures, transitioning to all-electronic filings and rulings, use of video conferencing software to conduct remote hearings, and review of options for website revisions to provide forms and templates for electronic filings, docket updates, rulings/decisions, and other information.

Construction Contract Appeals

Appeals Resolved by Administrative Dismissal

Cardi Corporation #3-71232-008

Cardi Corporation notified this Office that it was appealing a determination of the Chief Engineer on the above referenced claim. Subsequently, on July 14, 2021, Cardi filed suit against the Department to pursue the same claim (*see* Suffolk Superior Court docket #2184CV01601). Pursuant to M.G.L. c. 6C, §18, the matter is to be handled by the Office of the Attorney General in proceedings before the Superior Court.

R.M. Pacella Inc. – Contract #113676

This Office received a statement of claim dated October 14, 2021 from R.M. Pacella Inc. claiming additional compensation under its contract. The matter was dismissed for lack of jurisdiction as there was no final determination by the division on the merits of the claim.

Appeals Pending

DW White Construction Inc. #5-97935-001

A notice of appeal was received appealing the Chief Engineer's determination to deny a claim in the amount of \$67,034.40 for the additional cost to excavate 5,663 cubic yards of unsuitable materials and provide special borrow and backfill. It is expected that a hearing will be held and a report and recommendation will be made to the Secretary in calendar year 2022.

A. Pereira Construction Company #2-102060-004

A notice of appeal was received appealing the Chief Engineer's determination to deny a claim in the amount of \$236,508.08 for the additional cost to install utilities because the Department allegedly prohibited the use of steel plates in the roadway during construction. It is expected that a hearing will be held and a report and recommendation will be made to the Secretary in calendar year 2022.

A. Pereira Construction Company #2-102060-003

A notice of appeal was received appealing the Chief Engineer's determination to deny a claim in the amount of \$11,846.67 for the additional cost to install a gutter inlet because the Department's directives allegedly caused delays and additional material costs. It is expected that a hearing will be held and a report and recommendation will be made to the Secretary in calendar year 2022.

Direct Payment Demands

In 2021, the following direct payment demands were received and resolved by rulings on the merits in accordance with G.L. c.30, §39F:

Algar Construction Corp. – October 19, 2021

General Contractor: S&R Construction
Contract: #90724 – Lowell – VFW Highway over Beaver Brook
Bridge Replacement
Amount: \$747,769.52
Decision: Denied – December 6, 2021

Pro-Cut Concrete Cutting, Inc. – October 20, 2021

General Contractor: SPS New England, Inc.
Contract: MBTA #B22CN02
Amount: \$800,855.00
Decision: Denied – October 25, 2021

SES America, Inc. – August 4, 2021 / August 19, 2021

General Contractor: Liddell Brothers, Inc.
Contracts: #105776 and #105997 – District 5
Amount: #105776 = \$80,475.00
#105997 = \$87,749.00
Decision: Denied – September 20, 2021

John W. Egan Company, Inc. – July 28, 2021

General Contractor: CTA Construction Company, Inc.
Contract: #99594 – Worcester – District 3 Administration Bldg.
Amount: \$62,274.75.
Decision: Denied – August 27, 2021

Newport Construction Corp. – May 20, 2021

General Contractor: S&R Corp.
Contract: #99511 – Sumner Tunnel and Rte 1A Reconstruction
Amount: \$4,000.00
Decision: Allowed – June 15, 2021

Newport Construction Corp. – May 20, 2021

General Contractor: S&R Corp.
Contract: #102201 - Lowell – Route 113 at Mammoth Rd.
Amount: \$95,242.50
Decision: Allowed – June 15, 2021

Newport Construction Corp. – May 20, 2021

General Contractor: S&R Corp.
Contract: #102203 - Wakefield – Bridge Deck Replacement
Amount: \$54,031.42
Decision: Allowed – June 15, 2021

Newport Construction Corp. – May 20, 2021

General Contractor: S&R Corp.
Contract: #90724 - Lowell – Bridge Replacement
Amount: \$178,298.21
Decision: Allowed – June 15, 2021

Boston Concrete Corp. – May 7, 2021

General Contractor: Newport Construction Corp.
Contract: #109995 - Malden – Exchange Street
Amount: \$37,441.00
Decision: Allowed – June 4, 2021

Boston Concrete Corp. – May 6, 2021

General Contractor: Newport Construction Corp.
Contract: #100440 - Haverhill – Route 97
Amount: \$155,645.00
Decision: Allowed - June 4, 2021

Boston Concrete Corp. – April 13, 2021

General Contractor: Newport Construction Corp.
Contract: MBTA #W90CN01 – Oak Grove Station
Amount: \$53,754.00
Decision: Denied – May 5, 2021

Boston Concrete Corp. – April 13, 2021

General Contractor: Newport Construction Corp.
Contract: #109995 - Malden – Exchange Street
Amount: \$37,441.00
Decision: Denied Without Prejudice – May 5, 2021

Boston Concrete Corp. – April 13, 2021

General Contractor: Newport Construction Corp.
Contract: #100440 - Haverhill – Route 97
Amount: \$155,801.00
Decision: Denied Without Prejudice – May 5, 2021

Boston Concrete Corp. – April 13, 2021

General Contractor: Newport Construction Corp.
Contract: DCR #P19-3293-C1A – Oak Grove Station
Amount: \$133,854.00
Decision: Denied – May 4, 2021

Massachusetts UCP Board Appeals

In 2021, the following contractor appeals from DBE decertification proceedings initiated by the MassUCP were received by or were pending with the Massachusetts Unified Certification Program Adjudicatory Board.

Matters Pending

Atlantic Bridge & Engineering, Inc. - MUCP #2020-0001

Atlantic Bridge & Engineering Inc. requested a hearing before the Board to appeal a determination by MassUCP to initiate decertification proceedings based on a finding that the owner of the firm is not “economically disadvantaged.”. A hearing on the appeal began in 2021. Due to the large number of witnesses called by the parties and various scheduling impacts, the hearing continued into 2022. It is anticipated that the matter will be decided by the Board in early 2022.

RL Controls, Inc. - MUCP #2020-0002

RL Controls Inc. requested a hearing before the Board to appeal a determination by MassUCP that the firm is ineligible to remain certified as a Disadvantaged Business Enterprise (DBE) in NAICS code 811213 (“Communication Equipment Repair and Maintenance”). The matter was dismissed on January 25, 2021 after the MassUCP advised that it was withdrawing its decertification proposal.

Vigil Electric Company, Inc. - MUCP #2020-0003

Vigil Electric Company, Inc. requested a hearing before the Board to appeal a determination by MassUCP to initiate decertification proceedings. The matter was scheduled to be heard in 2021, however, Vigil was granted a request to delay the proceedings for several months due to the unavailability of the owner. The appeal will be heard in calendar year 2022.

Strategic Environmental Services - MUCP #2020-0004

Strategic Environmental Services, Inc. requested a hearing before the Board to appeal a determination by MassUCP that the firm is ineligible to remain certified as a Disadvantaged Business Enterprise (DBE) in NAICS code 562910 (“Remediation Services”). The matter was dismissed on July 19, 2021 when the MassUCP advised that it was withdrawing its decertification proposal.

Arora Engineers - MUCP #2021-0001

Arora Engineers appealed a determination by MassUCP to initiate decertification proceedings based on its finding that the firm’s gross receipts exceed the USDOT size standard prescribed in 49 CFR § 26.65. It is anticipated that the matter will be heard and decided by the Board in early 2022.

MON Landscaping Inc. - MUCP #2021-0002

MON Landscaping requested a hearing before the Board to appeal a determination by MassUCP to initiate decertification proceedings based on a finding that the owner of the firm is not “economically disadvantaged.” It is anticipated that the matter will be heard and decided by the Board in early 2022.

APPENDIX OF DECISIONS/RULINGS

A. Construction Contract AppealsA-1

Memorandum and Order of Dismissal: Cardi Corporation #3-71232-008

Memorandum and Order of Dismissal: R.M. Pacella Inc. - Contract #113676

B. Direct Payment Demands B-1

Ruling, Direct Payment Demand of Algar Construction Corp. dated Dec. 6, 2021

Ruling, Direct Payment Demand of Pro-Cut Concrete Cutting dated Oct. 25, 2021

Ruling, Direct Payment Demand of SES America, Inc. dated Sept. 20, 2021

Ruling, Direct Payment Demand of John W. Egan Company, Inc. dated Aug. 27, 2021

Ruling, Direct Payment Demand of Newport Construction Corp. dated June 15, 2021

Ruling, Direct Payment Demand of Newport Construction Corp. dated June 15, 2021

Ruling, Direct Payment Demand of Newport Construction Corp. dated June 15, 2021

Ruling, Direct Payment Demand of Newport Construction Corp. dated June 15, 2021

Ruling, Direct Payment Demand of Boston Concrete Corp. dated June 4, 2021

Ruling, Direct Payment Demand of Boston Concrete Corp. dated June 4, 2021

Ruling, Direct Payment Demand of Boston Concrete Corp. dated May 5, 2021

Ruling, Direct Payment Demand of Boston Concrete Corp. dated May 5, 2021

Ruling, Direct Payment Demand of Boston Concrete Corp. dated May 5, 2021

Ruling, Direct Payment Demand of Boston Concrete Corp. dated May 4, 2021

C. Mass. UCP Adjudicatory Board AppealsC-1

*Scheduling Orders and Rulings, In the Matter of Atlantic Bridge &
Engineering, Inc. (MUCP #2020-0001)*

*Memorandum and Order of Dismissal, In the Matter of R.L.
Controls (MUCP #2020-0002)*

APPENDIX A-1

RULINGS

CONSTRUCTION CONTRACT APPEALS



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Secretary & CEO



OFFICE OF THE ADMINISTRATIVE LAW JUDGE

To: David A. Zimmermann
Cardi Corporation
400 Lincoln Avenue
Warwick, RI 02888

Owen Kane, Esq.
Office of the General Counsel
MassDOT
10 Park Plaza
Boston, MA 02116

Re: Appeal of Cardi Corp.
3-71232-008 / Bridge W-44-107 Paint Sequencing - QuikDeck

MEMORANDUM

By letter dated May 28, 2021, Cardi Corporation notified this Office that it was appealing a determination of the Chief Engineer on the above referenced claim. Subsequently, on July 14, 2021, Cardi filed suit against the Department to pursue the same claim (*see* Suffolk Superior Court docket #2184CV01601).

Pursuant to M.G.L. c. 6C, §18, the matter is to be handled by the Office of the Attorney General in proceedings before the Superior Court

ORDER

The above referenced appeal to this Office is dismissed.

Albert Caldarelli
Administrative Law Judge

Dated: August 3, 2021



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Secretary & CEO



OFFICE OF THE ADMINISTRATIVE LAW JUDGE

To: Richard M. Pacella, Jr., President
R.M. Pacella Inc.
3 Madison Street
Plainsville, MA 02762-1318

John McInerney
District 6 Highway Director
10 Park Plaza
Boston, MA 02116

Re: **R.M. Pacella Inc.**
Contract #113676
Statement of Claim dated October 14, 2021

MEMORANDUM

This Office received a statement of claim dated October 14, 2021 in which R.M. Pacella Inc. purportedly claims additional compensation pursuant to the above-referenced contract.

The jurisdiction of this Office extends to “claims by contractors from determinations of the division.” M.G.L. c. 6C, §40. The highway division, through its Chief Engineer, makes final determinations on contractor claims pursuant to Division I, Subsection 7.16 of the contract and Standard Operating Procedure CSD-25-14-1-000. Contractors may then appeal from such determinations to this Office. With respect to the issues contained in the statement of claim submitted to this Office, there has been no final determination by the division.

ORDER

At this time, this Office lacks jurisdiction to hear the above matter. Accordingly, the matter is DISMISSED.

Albert Caldarelli
Administrative Law Judge

Dated: December 6, 2021

APPENDIX B-1

RULINGS

DIRECT PAYMENT DEMANDS



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations
FROM: Albert Caldarelli, Administrative Law Judge
DATE: December 6, 2021
RE: **Request for Direct Payment pursuant to M.G.L. c.30, §39F**

Claimant: Algar Construction Corp.
Contractor: S&R Construction
Contracts: #90724 - Lowell – VFW Highway over Beaver Brook Bridge Replacement
District: District 4
Amount: \$747,769.52

This Direct Payment Demand (Demand) by Algar Construction Corp. (Algar) was received by the Department on October 19, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. Algar is an approved subcontractor on Contract #90724. Its subcontract scope is to perform concrete work as part of bridge repairs pursuant to Item 995.01 of the Contract.
2. The Demand consists of a one-page letter signed by the President of Algar and a statement that Algar's "obligations as a subcontractor as an approved subcontractor on contract 90724 have been roughly 75% completed."
3. The Demand is not supported by "a sworn statement delivered to or sent by certified mail to the awarding authority." *See* M.G.L. c. 30, §39F(1)(d).
4. The Demand includes the following chart:

"Amount of Claim:	Contracted Work	\$584,125.00
	Change Orders	163,644.52
	Total due to Algar:	\$747,769.52"

5. The general contractor S&R Construction submitted a reply dated November 21, 2021, with a certified copy to Algar. The Reply requests that the Department deny Algar's Demand because Algar is not substantially complete with its subcontract work, and because Algar failed to comply with the procedural requirements of G.L. 30, §39F.

6. MassDOT construction staff in District 4 advise that Algar has completed Stage 1 of the required subcontract work. Stage 2 approximately 90% complete as of November 4, 2021. The remaining work on Stage 2 (Bridge sidewalk and curb) was expected to be completed during the week of November 8, 2021.

RULING

In pertinent part, G.L. c.30, §39F(1)(b) provides: “If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work.”

Algar’s Demand is pre-mature. A subcontractor is not eligible for a direct payment until seventy days after completion of the subcontract work. On its face, the Demand states that Algar is “roughly 75% completed”, which is not substantial completion as required in G.L. c.30, §39F. The earliest that Algar could have achieved substantial completion based on information from MassDOT District 4 is the week of November 8. Even if Algar achieved substantial completion as of that date, the seventy-day statutory period during which S&R Corporation is required to resolve all subcontractor payment issues has not yet expired.

Algar’s Demand also fails to meet procedural requirements of G.L. c.30, §39F: (1) there is no sworn statement; (2) the chart contained in the Demand does not satisfy the statute’s requirement for “a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work”; (3) there is no evidence to indicate that the Demand was properly delivered to the general contractor; (4) there is no statement of the status of completion of the subcontract work demonstrating that the work is substantially complete.

For the reasons stated above, the Demand is DENIED.

cc:

Algar Construction Corp.
740 Meadowbrook Road
Brockton, MA 02301

S&R Construction
706 Broadway Street
Lowell, MA 01854

Carrie Lavallee, Chief Engineer
David Spicer, Deputy Chief Engineer for Construction
Paul Stedman, District 4 Highway Director



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Secretary & CEO

MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations
FROM: *AC* Albert Caldarelli, Administrative Law Judge
DATE: October 25, 2021
RE: Request for Direct Payment pursuant to M.G.L. c. 30, §39F

Claimant: Pro-Cut Concrete Cutting, Inc.
Contractor: SPS New England, Inc.
Contract: MBTA #B22CN02
City/Town: Boston / Cambridge
Amount: \$800,855.00

This direct payment demand (Demand) by Pro-Cut Concrete Cutting, Inc. was received by the Department on October 20, 2021.

FINDINGS

The Demand appears to arise out of a contract between the MBTA and SPS New England, Inc. The jurisdiction of this Office extends only to direct payment demands arising from contracts with the Massachusetts Department of Transportation.

RULING

M.G.L. c. 30, §39F governs the process for making a demand for direct payment from an awarding authority. In this case, Pro-Cut Concrete Cutting, Inc. has not made its demand on the proper awarding authority, which is MBTA.¹ To the extent that Boston Concrete demands direct payment from MassDOT, the Demand must be DENIED.

Direct payment demands arising from MBTA contracts should be made by a sworn statement delivered to or sent by certified mail to:

MBTA
Attn: Roger LeBoeuf, Senior Lead Counsel / Capital Delivery
10 Park Plaza
Boston, MA 02116
rleboeuf@MBTA.com

¹ Copies of the Demand and this Ruling are being provided to MBTA for information. Nothing in this Ruling should be construed in any way as a determination on the merits should Pro-Cut Concrete Cutting, Inc. submit its Demand to the proper awarding authority in accordance with G.L. c. 30, §39F.

cc: Pro-Cut Concrete Cutting, Inc.
124 Calvary St,
Waltham, MA 02453

SPS New England Inc.
98 Elm Street
Salisbury, MA 01952

Roger LeBoeuf, MBTA



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations
FROM: *AG* Albert Caldarelli, Administrative Law Judge
DATE: September 20, 2021
RE: **Payment Bond Claims**

Claimant: SES America, Inc.
Contractor: Liddell Brothers, Inc.
Contracts: #105776 and #105997
District: District 5
Amount: #105776 = \$80,475.00
 #105997 = \$87,749.00

This acknowledges receipt of two pieces of correspondence that you forwarded to me: one is a letter dated August 4, 2021 and addressed to the Secretary of Transportation, the other is dated August 19, 2021 and addressed to Louis Lamoureux, Direct 5 Area Construction Engineer.

FINDINGS

Based on my review, it appears that the correspondence is providing notice to the Department of payment bond claims made by SES America, Inc. ("SES") to Liberty Mutual Insurance Company, the surety on contracts #105776 and 105997. The correspondence does not indicate that SES is making a demand pursuant to M.G.L. c. 30, §39F; however, if that was SES's intention, the Demand fails to comply with the formal requirements of G.L. c.30, §39F.

If SES wishes to make a direct payment demand pursuant to G.L. c. 30, §39F, it must clearly state that intent so that it is clear that a demand has been made and delivered to the awarding authority and a copy delivered or mailed to the general contractor in accordance with statutory requirements. Also, Section 39F does not permit aggregation of demands across multiple contracts; SES should submit a demand for each contract for which it seeks direct payment and provide a "a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work" and all other information needed to demonstrate what Department approved work was done but remains unpaid on each contract.

For example, Department construction staff advises that pursuant to the contract specifications, 25% of the pay item amount for Variable Message Signs provided by SES is currently being retained by the Department pending final testing and acceptance. Such amounts "retained by the awarding authority as the estimated cost of completing the incomplete and

unsatisfactory items of work” are not subject to a direct payment demand. Any detailed breakdown provided by SES must account for contract payment terms and amounts that are excluded from direct payment, and demonstrate what, if any, testing obligations SES has pursuant to each contract and whether it has substantially completed those and all of its subcontract obligations as required by G.L. c. 30, §39F(d).

For the reasons stated above, take no action with respect to the correspondence received.

cc:

SES America, Inc.
720 Washington Street
Pembroke, MA 02359

Liddell Brothers, Inc.
600 Industrial Drive
Halifax, MA 02338

Carrie Lavalley, Acting Chief Engineer
Michael McGrath, Deputy Chief Engineer for Construction
Mary-Joe Perry, District 5 Highway Director



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations
FROM: Albert Caldarelli, Administrative Law Judge
DATE: August 27, 2021
RE: **Request for Direct Payment pursuant to M.G.L. c.30, §39F**

Claimant: John W. Egan Company, Inc.
Contractor: CTA Construction Company, Inc.
Contract: #99594
City/Town: Worcester – Construction of MassDOT District 3 Administration Building
Amount: \$62,274.75

This direct payment demand (Demand) by John W. Egan Company (Egan) was received by the Department on July 28, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. Egan is a filed sub-bidder on Contract #99594 in the painting category. Its subcontract scope includes work covered under pay item 100.75.
2. The Demand complies with the formal requirements of G.L. c.30, §39F:
 - a. It contains a sworn statement by the Project Manager of Egan.
 - b. A copy was provided to the general contractor, CTA Construction Company (CTA), by certified mail (receipt #7020 0090 0001 6370 6036).
 - c. It contains a detailed breakdown of the item number and quantities of work completed, dates of completion, and amounts paid and unpaid.
3. The Demand asserts that the subcontract work was substantially completed and that there is a balance due in the amount of 62,274.75.
4. The general contractor CTA submitted a reply dated July 22, 2021, with a certified copy to Egan, within the required time period provided in G.L. c.30, §39F(d). The Reply asserts that the \$62,274.75 amount that is the subject of the Demand is not due Egan at this time because such amount represents change order work has not been approved and paid to CTA by the

Department, and retainage held against Egan's work that has not been released to CTA by the Department.

5. Department construction staff overseeing Contract #99594 confirms that the \$62,274.75 amount that is the subject of the Demand has not been paid to the general contractor for the following reasons:

- a. Of the amount claimed by Egan, the Department continues to hold retainage in the amount of \$3968.13 pursuant to the terms of the contract governing release of retainage.
- b. The remaining amount of the demand appears to be a claim for change order work that has not yet been approved for payment to CTA by the Department.

RULING

G.L. c.30, §39F(1)(c) provides that a subcontractor may demand direct payment from an awarding authority "for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to for payment to the subcontractor ..." In this case, Egan has been paid for all subcontract work approved by the Department, less retainage held pursuant to the terms of the contract. The remaining amount of the Demand is a claim for extra work that has not been approved by the Department.

Amounts "retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work" are not subject to a direct payment demand. G.L. c.30, §39F(1)(e). Also, a claim for extra work is not an amount "to be included in a payment to the general contractor for payment to for payment to the subcontractor" unless and until the claim is approved by the Department for payment to CTA on Egan's account.

For the reasons stated above, the Demand is DENIED.

cc:

John W. Egan Company, Inc.
3 Border Street
West Newton, MA 02465

CTA Construction Co., Inc.
400 Totten Pond Road, 2nd Floor
Waltham, MA 02541

Patricia Leavenworth, Chief Engineer
Michael McGrath, Deputy Chief Engineer for Construction
Barry Lorion, District 3 Highway Director



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: Albert Caldarelli, Administrative Law Judge

DATE: June 15, 2021

RE: **Request for Direct Payment pursuant to M.G.L. c. 30, §39F**

Claimant:	Newport Construction Corp.
Contractor:	S&R Corp.
Contract:	MassDOT Contract #99511
City/Town:	Boston – Sumner Tunnel and Route 1A Reconstruction
Amount:	\$4,000.00

This direct payment demand (Demand) by Newport Construction Corp. (Newport) was received by the Department on May 20, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. The Demand consists of a two-page letter dated May 18, 2021 and a detailed breakdown of the balance due under the subcontract between Newport Construction Corp. and S&R Corp., including copies of invoices, communications, proposed subcontract terms and conditions, and other documentation.
2. The Demand is made by sworn statement of Mr. Richard A. DiFelice, President, of Newport, was delivered to the general contractor as confirmed by certified mail receipt, and in all other respects meets the procedural requirements of M.G.L. c.30, §39F.
3. Newport was approved by the Department to perform subcontract work pursuant to various paving items under the contract, which work was substantially completed on November 20, 2020.
4. The detailed breakdown and other supporting documentation included with the Demand support a finding that there is a balance due under the subcontract of \$4,000.00.
5. MassDOT District 6 construction staff provided confirmation that Newport's subcontract work was completed satisfactorily and paid in full to S&R.

6. The general contractor, S&R Corp., did not submit a written Reply within the statutory 10 day period for doing so.

RULING

The Demand complies with the formal requirements of M.G.L. c. 30, §39F.

As to the merits of the Demand, G.L. c. 30, §39F(1)(d) provides in pertinent part: "If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

Newport Construction Corp. substantially completed the paving work for which it was approved to perform as a subcontractor to S&R. The Department paid S&R in full for all subcontract work performed by Newport, but S&R did not make payment in full to Newport. As the general contractor has failed to make payment to Newport as required by G.L. c.30, §39F, the Department is obligated to make a direct payment in response to this Demand.

If there are remaining payments due S&R Corp. under the contract, please make direct payment to Newport Construction Corp. in the amount of \$4,000.00 from the next periodic, semi-final, or final estimate, and deduct that amount from such payments due S&R Corp. in accordance with Section 39F.

cc: Newport Construction Corp
145 Temple Street
Nashua, NH 03060

Boston Concrete Corp
706 Broadway Street
Lowell, MA 01854

Patricia Leavenworth, Chief Engineer
Michael McGrath, Deputy Administrator / Chief of Construction Engineering
John McInerney, District 6 Highway Director



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: Albert Caldarelli, Administrative Law Judge

DATE: June 15, 2021

RE: **Request for Direct Payment pursuant to M.G.L. c. 30, §39F**

Claimant:	Newport Construction Corp.
Contractor:	S&R Corp.
Contract:	MassDOT Contract #102201
City/Town:	Lowell – Route 113 at Mammoth Rd. Intersection Improvements and Related Work
Amount:	\$95,242.50

This direct payment demand (Demand) by Newport Construction Corp. (Newport) was received by the Department on May 20, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. The Demand consists of a two-page letter dated May 18, 2021 and a detailed breakdown of the balance due under the subcontract between Newport Construction Corp. and S&R Corp., including copies of invoices, communications, proposed subcontract terms and conditions, and other documentation.
2. The Demand is made by sworn statement of Mr. Richard A. DiFelice, President, of Newport, was delivered to the general contractor as confirmed by certified mail receipt, and in all other respects meets the procedural requirements of M.G.L. c.30, §39F.
3. Newport was approved by the Department to perform subcontract work pursuant to various paving items under the contract, which work was substantially completed on November 20, 2020.
4. The detailed breakdown and other supporting documentation included with the Demand support a finding that there is a balance due under the subcontract of \$95,242.50.
5. MassDOT District 4 construction staff provided confirmation that Newport's subcontract work was completed satisfactorily and paid in full to S&R.

6. The general contractor, S&R Corp., did not submit a written Reply within the statutory 10 day period for doing so.

RULING

The Demand complies with the formal requirements of M.G.L. c. 30, §39F.

As to the merits of the Demand, G.L. c. 30, §39F(1)(d) provides in pertinent part: "If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

Newport Construction Corp. substantially completed the paving work for which it was approved to perform as a subcontractor to S&R. The Department paid S&R in full for all subcontract work performed by Newport, but S&R did not make payment in full to Newport. As the general contractor has failed to make payment to Newport as required by G.L. c.30, §39F, the Department is obligated to make a direct payment in response to this Demand.

If there are remaining payments due S&R Corp. under the contract, please make direct payment to Newport Construction Corp. in the amount of \$95,242.50 from the next periodic, semi-final, or final estimate, and deduct that amount from such payments due S&R Corp. in accordance with Section 39F.

cc: Newport Construction Corp
145 Temple Street
Nashua, NH 03060

Boston Concrete Corp
706 Broadway Street
Lowell, MA 01854

Patricia Leavenworth, Chief Engineer
Michael McGrath, Deputy Administrator / Chief of Construction Engineering
Paul Stedman, District 4 Highway Director



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: Albert Caldarelli, Administrative Law Judge

DATE: June 15, 2021

RE: **Request for Direct Payment pursuant to M.G.L. c. 30, §39F**

Claimant:	Newport Construction Corp.
Contractor:	S&R Corp.
Contract:	MassDOT Contract #102203
City/Town:	Wakefield – Bridge Deck Replacement, Br. No. W-01-021 Hopkins Street over I-95/Rte. 128
Amount:	\$54,031.42

This direct payment demand (Demand) by Newport Construction Corp. (Newport) was received by the Department on May 20, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. The Demand consists of a two-page letter dated May 18, 2021 and a detailed breakdown of the balance due under the subcontract between Newport Construction Corp. and S&R Corp., including copies of invoices, communications, proposed subcontract terms and conditions, and other documentation.
2. The Demand is made by sworn statement of Mr. Richard A. DiFelice, President, of Newport, was delivered to the general contractor as confirmed by certified mail receipt, and in all other respects meets the procedural requirements of M.G.L. c.30, §39F.
3. Newport was approved by the Department to perform subcontract work pursuant to various paving items under the contract, which work was substantially completed on November 20, 2020.
4. The detailed breakdown and other supporting documentation included with the Demand support a finding that there is a balance due under the subcontract of \$54,031.42.
5. MassDOT District 4 construction staff provided confirmation that Newport's subcontract work was completed satisfactorily and paid in full to S&R.

6. The general contractor, S&R Corp., did not submit a written Reply within the statutory 10 day period for doing so.

RULING

The Demand complies with the formal requirements of M.G.L. c. 30, §39F.

As to the merits of the Demand, G.L. c. 30, §39F(1)(d) provides in pertinent part: "If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

Newport Construction Corp. substantially completed the paving work for which it was approved to perform as a subcontractor to S&R. The Department paid S&R in full for all subcontract work performed by Newport, but S&R did not make payment in full to Newport. As the general contractor has failed to make payment to Newport as required by G.L. c.30, §39F, the Department is obligated to make a direct payment in response to this Demand.

If there are remaining payments due S&R Corp. under the contract, please make direct payment to Newport Construction Corp. in the amount of \$54,031.42 from the next periodic, semi-final, or final estimate, and deduct that amount from such payments due S&R Corp. in accordance with Section 39F.

cc: Newport Construction Corp
145 Temple Street
Nashua, NH 03060

Boston Concrete Corp
706 Broadway Street
Lowell, MA 01854

Patricia Leavenworth, Chief Engineer
Michael McGrath, Deputy Administrator / Chief of Construction Engineering
Paul Stedman, District 4 Highway Director



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: Albert Caldarelli, Administrative Law Judge

DATE: June 15, 2021

RE: **Request for Direct Payment pursuant to M.G.L. c. 30, §39F**

Claimant:	Newport Construction Corp.
Contractor:	S&R Corp.
Contract:	MassDOT Contract #90724
City/Town:	Lowell – Bridge Replacement, Br. No. L-15-058 VFW Highway over Beaver Brook
Amount:	\$178,298.21

This direct payment demand (Demand) by Newport Construction Corp. (Newport) was received by the Department on May 20, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. The Demand consists of a two-page letter dated May 18, 2021 and a detailed breakdown of the balance due under the subcontract between Newport Construction Corp. and S&R Corp., including copies of invoices, communications, proposed subcontract terms and conditions, and other documentation.
2. The Demand is made by sworn statement of Mr. Richard A. DiFelice, President, of Newport, was delivered to the general contractor as confirmed by certified mail receipt, and in all other respects meets the procedural requirements of M.G.L. c.30, §39F.
3. Newport was approved by the Department to perform subcontract work pursuant to various paving items under the contract, which work was substantially completed on November 20, 2020.
4. The detailed breakdown and other supporting documentation included with the Demand support a finding that there is a balance due under the subcontract of \$178,298.21.
5. MassDOT District 4 construction staff provided confirmation that Newport's subcontract work was completed satisfactorily and paid in full to S&R.

6. The general contractor, S&R Corp., did not submit a written Reply within the statutory 10 day period for doing so.

RULING

The Demand complies with the formal requirements of M.G.L. c. 30, §39F.

As to the merits of the Demand, G.L. c. 30, §39F(1)(d) provides in pertinent part: "If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

Newport Construction Corp. substantially completed the paving work for which it was approved to perform as a subcontractor to S&R. The Department paid S&R in full for all subcontract work performed by Newport, but S&R did not make payment in full to Newport. As the general contractor has failed to make payment to Newport as required by G.L. c.30, §39F, the Department is obligated to make a direct payment in response to this Demand.

If there are remaining payments due S&R Corp. under the contract, please make direct payment to Newport Construction Corp. in the amount of \$178,298.21 from the next periodic, semi-final, or final estimate, and deduct that amount from such payments due S&R Corp. in accordance with Section 39F.

cc: Newport Construction Corp
145 Temple Street
Nashua, NH 03060

Boston Concrete Corp
706 Broadway Street
Lowell, MA 01854

Patricia Leavenworth, Chief Engineer
Michael McGrath, Deputy Administrator / Chief of Construction Engineering
Paul Stedman, District 4 Highway Director



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: Albert Caldarelli, Administrative Law Judge

DATE: June 4, 2021

RE: **Request for Direct Payment pursuant to M.G.L. c. 30, §39F**

Claimant:	Boston Concrete Corp.
Contractor:	Newport Construction Corp.
Contract:	MassDOT Contract #109995
City/Town:	Malden – Exchange Street
Amount:	\$37,441.00

This direct payment demand (Demand) by Boston Concrete Corp. (BCC) was received by the Department on May 7, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. The Demand consists of a two-page letter dated May 6, 2021 and a detailed breakdown of the balance due under the subcontract between BCC and Newport Construction Corp., including 69 pages of attachments consisting of invoices, purchase orders, spreadsheets, and other documentation of deliveries of materials by BCC to the Malden / Exchange Street project site on various dates through November 18, 2020.
2. The Demand is made by sworn statement of Mr. Ploof and in all other respects meets the procedural requirements of M.G.L. c.30, §39F.
3. BCC substantially completed its subcontract obligations by supplying concrete to Newport Construction Corp. on various dates through November 18, 2020, no deliveries are outstanding, and a balance due of \$37,441.00 is owed.
4. MassDOT District 4 construction staff provided confirmation that BCC delivered 178 cubic yards of concrete to the project, which was used for driveways, sidewalks, and other work on the project. Payment for such work was made to Newport Construction Corp.

5. The general contractor, Newport Construction Corp., did not submit a written Reply. Counsel for Newport advised that no Reply was submitted because the amount claimed in the Demand is owed and accurately reflects the balance due BCC under the subcontract for this project.

RULING

The Demand complies with the formal requirements of M.G.L. c. 30, §39F.

As to the merits of the Demand, G.L. c. 30, §39F(1)(d) provides in pertinent part: "If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority."

BCC meets the statutory definition of a "subcontractor" because "contract[ed] with the general contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars." BCC delivered concrete to the project, which was accepted and used for driveways, sidewalks, and other work on the project. Newport Construction Corp. was paid in full by the Department for all work for which the concrete was used, but Newport did not make payment to BCC for the material. As the general contractor has failed to make payment for materials furnished by BCC as required by G.L. c.30, §39F, the Department is obligated to make a direct payment in response to this Demand.

If there are remaining payments due Newport Construction Corp. under the contract, please make direct payment to Boston Concrete Corp. in the amount of \$37,441.00 from the next periodic, semi-final, or final estimate, and deduct that amount from such payments due Newport Construction Corp. in accordance with Section 39F.

cc: Steven Ploof, Treasurer
Boston Concrete Corp.
706 Broadway Street
Lowell, MA 01854

Newport Construction Corp
145 Temple Street
Nashua, NH 03060

Patricia Leavenworth, Chief Engineer
Michael McGrath, Deputy Administrator / Chief of Construction Engineering
Paul Stedman, District 4 Highway Director



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: Albert Caldarelli, Administrative Law Judge

DATE: June 4, 2021

RE: **Request for Direct Payment pursuant to M.G.L. c. 30, §39F**

Claimant:	Boston Concrete Corp.
Contractor:	Newport Construction Corp.
Contract:	MassDOT Contract #100440
City/Town:	Haverhill – Route 97
Amount:	\$155,645.00

This direct payment demand (Demand) by Boston Concrete Corp. (BCC) was received by the Department on May 6, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. The Demand consists of a two-page letter dated May 6, 2021 and a detailed breakdown of the balance due under the subcontract between BCC and Newport Construction Corp., including 230 pages of attachments consisting of invoices, purchase orders, spreadsheets, and other documentation of deliveries of materials by BCC to the Haverhill / Route 97 project site on various dates through January 14, 2021.
2. The Demand is made by sworn statement of Mr. Ploof and in all other respects meets the procedural requirements of M.G.L. c.30, §39F.
3. BCC substantially completed its subcontract obligations by supplying concrete to Newport Construction Corp. on various dates through January 14, 2021, no deliveries are outstanding, and a balance due of \$155,645.00 is owed.
4. MassDOT District 4 construction staff provided confirmation that BCC delivered concrete to the project. The concrete passed on-site material testing, and was accepted and used on the project. The project completion date was December 31, 2020.

5. The general contractor, Newport Construction Corp., did not submit a written Reply. Counsel for Newport advised that no Reply was submitted because the amount claimed in the Demand is owed and accurately reflects the balance due BCC under the subcontract for this project.

RULING

The Demand complies with the formal requirements of M.G.L. c. 30, §39F.

As to the merits of the Demand, G.L. c. 30, §39F(1)(d) provides in pertinent part: “If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority.”

BCC meets the statutory definition of a “subcontractor” because “contract[ed] with the general contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.” BCC delivered concrete to the project, which passed on-site material testing, and was accepted and used on the project. Newport Construction Corp. was paid in full by the Department for all work for which the concrete was used, but Newport did not make payment to BCC for the material. As the general contractor has failed to make payment for materials furnished by BCC as required by G.L. c.30, §39F, the Department is obligated to make a direct payment in response to this Demand.

If there are remaining payments due Newport Construction Corp. under the contract, please make direct payment to Boston Concrete Corp. in the amount of \$155,645.00 from the next periodic, semi-final, or final estimate, and deduct that amount from such payments due Newport Construction Corp. in accordance with Section 39F.

cc: Steven Ploof, Treasurer
Boston Concrete Corp
706 Broadway Street
Lowell, MA 01854

Newport Construction Corp
145 Temple Street
Nashua, NH 03060

Patricia Leavenworth, Chief Engineer
Michael McGrath, Deputy Administrator / Chief of Construction Engineering
Paul Stedman, District 4 Highway Director



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations
FROM: *AC* Albert Caldarelli, Administrative Law Judge
DATE: April 20, 2021
RE: Request for Direct Payment pursuant to M.G.L. c. 30, §39F

Claimant: Boston Concrete Corp.
Contractor: Newport Construction Corp.
Contract: MBTA #W90CN01
City/Town: Oak Grove Station
Amount: \$53,754.00

This direct payment demand (Demand) by Boston Concrete Corp. was received by the Department on April 13, 2021.

FINDINGS

The Demand appears to arise out of a contract between the MBTA and Newport Construction Corporation. The jurisdiction of this Office extends only to direct payment demands made on the Massachusetts Department of Transportation.

RULING

M.G.L. c. 30, §39F governs the process for making a demand for direct payment from an awarding authority. In this case, Boston Concrete has not made its demand on the proper awarding authority, which is MBTA.¹ To the extent that Boston Concrete demands direct payment from MassDOT, the Demand must be DENIED.

Direct payment demands arising from MBTA contracts should be made by a sworn statement delivered to or sent by certified mail to:

MBTA
Attn: Roger LeBoeuf, Senior Lead Counsel / Capital Delivery
10 Park Plaza
Boston, MA 02116
rleboeuf@MBTA.com

¹ Copies of the Demand and this Ruling are being provided to MBTA for information. Nothing in this Ruling should be construed in any way as a determination on the merits should Boston Concrete submit its Demand to the proper awarding authority in accordance with G.L. c. 30, §39F.

cc: Steven Ploof, Treasurer
Boston Concrete Corp.
706 Broadway Street
Lowell, MA 01854

Newport Construction Corp
145 Temple Street
Nashua, NH 03060

Roger LeBoeuf, MBTA



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: Albert Caldarelli, Administrative Law Judge

DATE: May 5, 2021

RE: **Request for Direct Payment pursuant to M.G.L. c. 30, §39F**

Claimant:	Boston Concrete Corp.
Contractor:	Newport Construction Corp.
Contract:	MassDOT Contract #109995
City/Town:	Malden – Exchange Street
Amount:	\$37,441.00

This direct payment demand (Demand) by Boston Concrete Corp. (BCC) was received by the Department on April 13, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. The Demand consists of a two-page letter dated April 9, 2021 signed by BCC's Treasurer Steven Ploof.
2. The Demand states that BCC entered into a purchase order agreement with the general contractor Newport Construction Corp. on August 11, 2020. A copy of the purchase order is not provided.
3. The Demand also states that BCC substantially completed its obligations by supplying concrete to Newport Construction Corp. on or about November 18, 2020, that no deliveries are outstanding, and that a balance due of \$37,441.00 is owed. No information is provided concerning the pricing terms between BCC and Newport Construction Corp., the quantity of concrete delivered, or how BCC arrived at the \$37,441.00 amount of the Demand.
4. MassDOT District 4 construction staff provided confirmation that BCC delivered 178 cubic yards of concrete to the project. However, it did not have information concerning the pricing terms between BCC and Newport Construction Corp., nor could it determine how the \$37,411.00 amount of the Demand relates to the 178 cubic yards of concrete delivered to the project, if it does at all.

5. The general contractor, Newport Construction Corp., submitted a Reply through counsel dated April 20, 2021 contending that the Demand is procedurally deficient because it fails to provide “a detailed breakdown of the balance due under the subcontract” and therefore, should be denied.

RULING

M.G.L. c.30, §39F requires that a Demand contain “a detailed breakdown of the balance due under the subcontract ...” BCC has not met this requirement. The Demand does not provide sufficient detail to support the \$37,441.00 amount claimed. No information is provided concerning the pricing terms between BCC and Newport Construction Corp., the quantity of concrete delivered to the project, or how BCC arrived at the \$37,441.00 amount of the Demand. Without a proper detailed breakdown, MassDOT is unable to determine how the \$37,441.00 amount of the Demand relates to the 178 cubic yards of concrete delivered to the project, if it does at all, and whether the amount accurately reflects a balance due under the subcontract.

For the reasons stated above, the Demand is DENIED WITHOUT PREJUDICE.¹

cc: Steven Ploof, Treasurer
Boston Concrete Corp.
706 Broadway Street
Lowell, MA 01854

Newport Construction Corp
145 Temple Street
Nashua, NH 03060

Patricia Leavenworth, Chief Engineer
Michael McGrath, Deputy Administrator / Chief of Construction Engineering
Paul Stedman, District 4 Highway Director

¹ BCC may refile a new Demand in compliance with the requirements of Section 39F. If BCC does refile, its renewed Demand must include a “detailed breakdown of the balance due under the subcontract”.



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: Albert Caldarelli, Administrative Law Judge

DATE: May 5, 2021

RE: **Request for Direct Payment pursuant to M.G.L. c. 30, §39F**

Claimant:	Boston Concrete Corp.
Contractor:	Newport Construction Corp.
Contract:	MassDOT Contract #100440
City/Town:	Haverhill – Route 97
Amount:	\$155,801.00

This direct payment demand (Demand) by Boston Concrete Corp. (BCC) was received by the Department on April 13, 2021.

FINDINGS

Based on my review of the Demand, the applicable contract, and input from MassDOT construction staff concerning the status of subcontract work, I make the following findings:

1. The Demand consists of a two-page letter dated April 9, 2021 signed by BCC's Treasurer Steven Ploof.
2. The Demand states that BCC entered into a purchase order agreement with the general contractor Newport Construction Corp. on October 7, 2019. A copy of the purchase order is not provided.
3. The Demand also states that BCC substantially completed its obligations by supplying concrete to Newport Construction Corp. on or about January 14, 2021, that no deliveries are outstanding, and that a balance due of \$155,801.00 is owed. No information is provided concerning the pricing terms between BCC and Newport Construction Corp., the quantity of concrete delivered, or how BCC arrived at the \$155,801.00 amount of the Demand.
4. MassDOT District 4 construction staff provided confirmation that BCC delivered concrete to the project, although it could not confirm the quantity delivered. It did not have information concerning the pricing terms between BCC and Newport Construction Corp., nor could it determine how the \$155,801.00 amount of the Demand relates to the concrete delivered to the project, if it does at all.

5. The general contractor, Newport Construction Corp., submitted a Reply through counsel dated April 20, 2021 contending that the Demand is procedurally deficient because it fails to provide “a detailed breakdown of the balance due under the subcontract” and therefore, should be denied.

RULING

M.G.L. c.30, §39F requires that a Demand contain “a detailed breakdown of the balance due under the subcontract ...” BCC has not met this requirement. The Demand does not provide sufficient detail to support the \$155,801.00 amount claimed. No information is provided concerning the pricing terms between BCC and Newport Construction Corp., the quantity of concrete delivered to the project, or how BCC arrived at the \$155,801.00 amount of the Demand. Without a proper detailed breakdown, MassDOT is unable to determine how the \$155,801.00 amount of the Demand relates to the concrete delivered to the project, if it does at all, and whether the amount accurately reflects a balance due under the subcontract.

For the reasons stated above, the Demand is DENIED WITHOUT PREJUDICE.¹

cc: Steven Ploof, Treasurer
Boston Concrete Corp.
706 Broadway Street
Lowell, MA 01854

Newport Construction Corp
145 Temple Street
Nashua, NH 03060

Patricia Leavenworth, Chief Engineer
Michael McGrath, Deputy Administrator / Chief of Construction Engineering
Paul Stedman, District 4 Highway Director

¹ BCC may refile a new Demand in compliance with the requirements of Section 39F. If BCC does refile, its renewed Demand must include a “detailed breakdown of the balance due under the subcontract”.



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Acting Secretary & CEO



MEMORANDUM

TO: Lina Swan, Director of Fiscal Operations

FROM: Albert Caldarelli, Administrative Law Judge

DATE: May 4, 2021

RE: **Request for Direct Payment pursuant to M.G.L. c. 30, §39F**

Claimant:	Boston Concrete Corp.
Contractor:	Newport Construction Corp.
Contract:	DCR #P19-3293-C1A
City/Town:	Oak Grove Station
Amount:	\$133,854.00

This direct payment demand (Demand) by Boston Concrete Corp. was received by the Department on April 13, 2021.

FINDINGS

The Demand appears to arise out of a contract between the Department of Conservation & Recreation (DCR) and Newport Construction Corporation. The jurisdiction of this Office extends only to direct payment demands made on the Massachusetts Department of Transportation.

RULING

M.G.L. c. 30, §39F governs the process for making a demand for direct payment from an awarding authority. In this case, Boston Concrete has not made its demand on the proper awarding authority, which is DCR. To the extent that Boston Concrete demands direct payment from MassDOT, the Demand must be DENIED.¹

cc: Steven Ploof, Treasurer
Boston Concrete Corp.
706 Broadway Street
Lowell, MA 01854

Newport Construction Corp
145 Temple Street
Nashua, NH 03060

¹ Nothing in this Ruling should be construed in any way as a determination on the merits should Boston Concrete submit its Demand to the proper awarding authority in accordance with G.L. c. 30, §39F.

APPENDIX C-1

RULINGS

MASSUCP ADJUDICATORY BOARD APPEALS



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO



**MASSACHUSETTS UNIFIED CERTIFICATION PROGRAM
ADJUDICATORY BOARD**

To: Joseph Barra, Esq.
Robinson & Cole
One Boston Place, 25th Floor
Boston, MA 02108

Ingrid Freire, Esq.
MassDOT, Office of the General Counsel
10 Park Plaza
Boston, MA 02116

In the Matter of Atlantic Bridge & Engineering, Inc. (MUCP #2020-0001)

ORDER

Atlantic Bridge & Engineering's ("ABE") request by letter dated February 1, 2021 to submit a Reply to MassUCP's Opposition is ALLOWED. ABE shall file its Reply on or before February 8, 2021.

On or before February 10, 2021, MassUCP shall provide for the Board's *in camera* review any documents contained in ABE's case file or otherwise subject to the Board's November 5, 2020 Order that it has withheld from disclosure to ABE.¹ For each such document, MassUCP shall identify the applicable privilege or exemption that it relies on for its decision to not produce the document to ABE.

The Parties shall be available on February __, 2021 for a status conference or other proceedings as the Board may determine after reviewing the Parties' filings.

Dated: February 3, 2021

The Adjudicatory Board

Albert A. Caldarelli
David Spicer
** Kenrick W. Clifton

By: Lisa Harol, Secretary
Tel: (857) 368-9495

*** Mr. Clifton has recused himself and did not participate in these rulings and orders*

¹ MassUCP advised in its January 29, 2021 Opposition at page 4 that it is amenable to the Board's *in camera* review of such records.



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO



**MASSACHUSETTS UNIFIED CERTIFICATION PROGRAM
ADJUDICATORY BOARD**

To: Joseph Barra, Esq.
Robinson & Cole
One Boston Place, 25th Floor
Boston, MA 02108

Ingrid Freire, Esq.
MassDOT, Office of the General Counsel
10 Park Plaza
Boston, MA 02116

In the Matter of Atlantic Bridge & Engineering, Inc. (MUCP #2020-0001)

NOTICE OF HEARING

An adjudicatory hearing will be held by and before the Board on the determination dated April 30, 2020 that that Atlantic Bridge & Engineering Inc. (ABE) is ineligible to remain certified as a Disadvantaged Business Enterprise (DBE) under 49 C.F.R. Part 26.

The Parties should appear as follows:

Date: September 30, 2021
Time: 1:00 p.m.
Location: via Teleconference (link to be provided)

MEMORANDUM AND ORDER

By letter dated April 16, 2021, ABE advised the Board of its position that the MassUCP did not fully comply with the Board's March 18, 2021 discovery order. ABE also requested that the Board grant further relief to remedy the alleged non-compliance. The MassUCP responded by letter dated April 30, 2021 asserting that it has fully complied with the Board's discovery order.

This latest discovery dispute between the parties is taken under advisement. The Board will rule on the matter at a later date to the extent it is not resolved or rendered moot in the course of these proceedings.

STANDARD OF REVIEW

In accordance with 49 C.F.R. §26.87(d)(1), the MassUCP has the burden of proving by a preponderance of the evidence that ABE does not meet the certification standards of 49 C.F.R. Part 26 for the reasons stated by MassUCP in its letter dated April 30, 2020.

The Board will hear this matter in accordance with (1) 49 C.F.R. §26.87, (2) G.L. c. 30A and (3) 801 C.M.R. §1.02 and §1.03 in order to determine:

1. Whether the MassUCP initiated proceedings against ABE in accordance with the procedural requirements of 49 C.F.R. §26.87(b);
2. Whether the MassUCP provided to ABE written notice under 49 C.F.R. §26.87(b) that sets forth a statement of reasons for its finding of reasonable cause, which specifically references evidence in the record on which each reason is based;
3. Whether the MassUCP's proposed determination that there is reasonable cause to find ABE ineligible to remain certified is based one or more of the grounds for decision under 49 C.F.R. §26.87(f);
4. Whether ABE is controlled by a socially and economically disadvantaged individual under 49 C.F.R. §26.71;
5. Whether ABE failed to cooperate with MassUCP under 49 C.F.R. §26.109.

Pursuant to 49 C.F.R. §26.87(d)(3), ABE may elect to present information and arguments in writing, without going to a hearing. In such a situation, MassUCP bears the same burden of proving by a preponderance of the evidence that ABE does not meet the certification standards of 49 C.F.R. Part 26, as it would during a hearing.

The parties have the right to be represented by counsel or other representative, to call and examine witnesses, to introduce exhibits, to cross examine witnesses and to present oral argument, pursuant to G.L. 30A §10 and §11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. §1.02 and §1.03. A party may request an alternative hearing date. Any request to reschedule the hearing should be made in writing and will be allowed by the Board only for good cause.

Dated: July 7, 2021

The Adjudicatory Board

Albert A. Caldarelli
David Spicer
**Kenrick W. Clifton

By: Lisa Harol, Secretary
Tel: (857) 368-9495

** Mr. Clifton has recused himself and did not participate in these rulings and orders



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO



**MASSACHUSETTS UNIFIED CERTIFICATION PROGRAM
ADJUDICATORY BOARD**

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Ingrid Freire, Esq.
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10 Park Plaza
Boston, MA 02116

In the Matter of Atlantic Bridge & Engineering, Inc. (MUCP #2020-0001)

MEMORANDUM AND ORDER

On December 1, 2021, the Adjudicatory Board of the Massachusetts Unified Certification Program (Board) held a status conference to address procedural and other matters that have arisen during the course of the hearing:

1. *Witness Testimony.* Based on ABE counsel's proffer regarding the subjects upon which certain witnesses are expected to testify, the Board has concluded that all factual matters that would be addressed by testimony of such witnesses have already been sufficiently addressed by prior witness testimony and exhibits thus far introduced at the hearing. As a result, the testimony of such witnesses will be unduly repetitious, unnecessary, and likely to cause unreasonable delay in these proceedings. Therefore, pursuant to 801 CMR 1.02(10)(f), the Board is exercising its discretion to exclude such testimony.

For the reasons stated above, the following witnesses are excused from any further obligations to appear and testify at the hearing unless otherwise ordered by the Board: Ayoka Drake, Nedra White, Monica McCue, Tina Andrews, Katia Kettouche, and Jerold Trabucco.

2. *Outstanding Discovery.* ABE has asked the Board to reconsider its April 16, 2021 motion to compel discovery and motion to permit service of interrogatories. The Board has done so, and is satisfied that MassUCP complied with the Board's order dated March 18, 2021 to "produce factual information and audit determinations, and a privilege log." The Board also incorporates its findings contained in its March 18, 20201 Memorandum and Order concerning information protected by the attorney/client and attorney work product privileges.

ABE motion to reconsider dated December 2, 2021 is DENIED.

3. *Exhibits.* The Board has confirmed the following.

Admitted into evidence:

- MassDOT Exhibits: 1, 4 through 12, 14 through 25, 28 through 31, 33
- ABE Exhibits: 101 through 109, 113, 115 through 123

Not admitted:

- MassDOT Exhibits: 2, 3, 13, 26, 27, 32, 34, 35

Not introduced as of this time:

- ABE Exhibits: 110, 111, 112, 114, 121

SCHEDULING ORDER

1. The hearing shall continue on December 8, 2021 from 1:00 pm to 3:30 pm via teleconference. ABE will proceed with its remaining witnesses (Mr. Oscar Johnson - surety broker, Mr. Charles Comtois - accounting expert, Mr. Wayne Capolupo - president of SPS New England) in the order of its choosing.
2. The hearing shall then continue on December 17, 2021 from 1:00 pm to 3:00 pm via teleconference.
3. Additional hearing dates will be scheduled if necessary.

Dated: December 2, 2021

The Adjudicatory Board

Albert A. Caldarelli
David Spicer
** Kenrick W. Clifton

By: Lisa Harol, Secretary
Tel: (857) 443-1756

*** Mr. Clifton has recused himself and did not participate in these rulings and orders*



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO



**MASSACHUSETTS UNIFIED CERTIFICATION PROGRAM
ADJUDICATORY BOARD**

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In the Matter of RL Controls, Inc. (MUCP #2020-0002)

MEMORANDUM AND ORDER

The Board scheduled this matter for hearing on January 25, 2021 at 11:00 am. By letter dated January 20, 2021 the MassUCP advised that it was withdrawing its proposal that RL Controls be decertified in NAICS Code 81123, having determined that RL Controls meets the size standards allowed by Federal regulations for small business concerns performing business activity under NAICS Code 81123.

ORDER

The Hearing scheduled for January 25, 2021 at 11:00 am is cancelled.

The matter before the Board is DISMISSED.

Dated: January 25, 2021

The Adjudicatory Board:

Albert A. Caldarelli
David Spicer
Kenrick W. Clifton

By: Lisa Harol, Secretary
Tel: (857) 368-9494